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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

October 30, 2014

The Honorable Eric Holder Jr.
Attorney General
United States Department of Justice
950 Pennsylvania Ave, N.W.
Washington, DC 20001

Dear Attorney General Holder:

I am increasingly concerned by revelations that federal law enforcement agencies appropriate the identity of others without their knowledge or consent while conducting investigations. I recently wrote to you expressing my dismay that the Drug Enforcement Administration created a Facebook profile under an unsuspecting woman's identity, which included suggestive pictures of the woman as well as pictures of her young child and niece. I am also concerned by a new report that the Federal Bureau of Investigation created a fake news story under the guise of the Associated Press to deliver malware to a teenage bomb-threat suspect's computer.

Such tactics carry ethical and legal risks. When law enforcement impersonates a cooperating defendant's identity, without her knowledge, to interact with criminals, it places the cooperator at risk without her consent. When law enforcement appropriates the identity of legitimate media institutions, it not only raises questions of copyright and trademark infringement but also potentially undermines the integrity and credibility of an independent press.

I appreciate the difficult challenges faced by law enforcement by the changing nature of technology and the great efforts agents across the country are making to keep our communities safe. Yet we cannot lose sight of the need for law enforcement to maintain the trust and confidence of the people they protect. Tactics such as these may ultimately prove counter-productive if they erode the public's trust in the judgment and integrity of law enforcement officers. They also surface at a time when the Justice Department is seeking even broader access to suspects' computers through an amendment to the Federal Rules of Criminal Procedure.

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I strongly believe that a person or entity's decision to participate in a law enforcement investigation, and the nature of such participation, should be made by the individual and the individual alone. As the Justice Department evaluates its investigative policies related to creating fake online profiles, I urge you to extend your review to all techniques involving federal law enforcement impersonating others without their consent. I believe the American people would expect as much.

Sincerely,

/s/

PATRICK LEAHY

Chairman